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National Security Division
U.S. Department of Justice
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RE: Joseph Lieberman's failure to register as a foreign agent of ZTE under FARA

Dear Chief Hunt:

Campaign Legal Center respectfully requests an investigation into whether former Sen. Joseph Lieberman has failed to comply with the Foreign Agents Registration Act of 1938 ("FARA").

As described below, Lieberman has failed to register as a foreign agent under FARA despite apparently acting as an agent of the Chinese telecom company ZTE since early December 2018. Lieberman is not eligible for FARA's Lobbying Disclosure Act ("LDA") exemption because he asserts that he is not engaged in lobbying activities on ZTE's behalf.

On December 13, 2018, *Politico* reported that ZTE had hired Lieberman “to fend off ongoing concerns that it poses a threat to U.S. national security” and “to conduct an ‘independent’ national security assessment of its products.”¹ The article noted that:

Lieberman plans to register as a lobbyist for ZTE, but he said he won’t actually lobby, instead focusing on his assessment for the company. Still, the former senator said he’s already “made a bunch of phone calls” and visited Capitol Hill twice in the last two weeks to meet with members of Congress who have spoken out against ZTE or are leaders of relevant committees. He declined to say which lawmakers, but Sens. Marco Rubio (R-Fla.) and Chris Van Hollen (D-Md.), two vocal ZTE critics, have spoken with him, according to their offices.²

A ZTE spokesperson confirmed Lieberman’s hiring to *Politico*, and in a statement added:

ZTE initiated this fact-finding mission as part of its comprehensive effort to better understand and address any national security concerns of its customers, Congressional and Executive Branch officials in the U.S., and governments across the globe.³

In recent months, members of the executive and legislative branches of the U.S. government have expressed concern that ZTE could endanger national security, and have enacted or sought to enact policies that directly affect the company.⁴ The U.S. Department of Commerce imposed a ban on ZTE for violating U.S. sanctions, a potentially “crippling” measure that was later reversed following negotiations between President Trump and Chinese President Xi Jinping.⁵ White House trade advisor Peter Navarro described President Trump’s intervention as a “personal

¹ Daniel Lippman & Steven Overly, *China’s ZTE Taps Joe Lieberman for D.C. Damage Control*, POLITICO (Dec. 13, 2018), <https://www.politico.com/story/2018/12/13/zte-china-joe-lieberman-1031383>.

² *Id.*

³ *Id.*

⁴ See, e.g., Lippman & Overly, *supra* note 1; see also Paul Mozur & Kevin Granville, *What Is ZTE? A Chinese Geopolitical Pawn That Trump Wants to Rescue*, N.Y. TIMES (June 7, 2018), <https://www.nytimes.com/2018/06/07/business/what-is-zte.html>; Ken Dilanian, *Top Intelligence Official Says Chinese ZTE Cellphones Pose Security Risk to U.S.*, NBC NEWS (May 15, 2018), <https://www.nbcnews.com/politics/congress/top-intelligence-official-says-chinese-zte-cellphones-pose-security-risk-n874276>.

⁵ Lippman & Overly, *supra* note 1; see also Sherisse Pham, *The Crippling U.S. Ban on ZTE Is Almost Over*, CNN BUSINESS (July 12, 2018), <https://money.cnn.com/2018/07/12/technology/zte-stock-us-ban/index.html>; see also Louis Nelson & Megan Cassella, *U.S. Strikes Deal with ZTE*, POLITICO (June 7, 2018), <https://www.politico.com/story/2018/06/07/zte-deal-finalized-630369>; Donald J. Trump (@realDonaldTrump), TWITTER (May 13, 2018, 11:01AM) <https://twitter.com/realdonaldtrump/status/995680316458262533>.

favor” to China’s president.⁶ Republican and Democratic Senators later sought to reinstate the ZTE ban.⁷

On December 20, 2018, Clarine Nardi Riddle of the firm Kasowitz Benson Torres (“KBT”) filed a new client lobbying registration with Congress describing Lieberman as a lobbyist for ZTE, with a note stating:

Sen. Lieberman/KBT has been retained to undertake an independent assessment of concerns that Members of Congress, Executive branch and American businesses have about any national security vulnerabilities and risks that ZTE products may pose in the US. After Lieberman/KBT gathers and assesses the national security concerns, Lieberman/KBT will then submit a report to ZTE concerning those concerns and appropriate measures that may be taken to resolve/or ameliorate them. Although Lieberman/KBT will not be advocating for ZTE, we have decided to register in the interest of transparency and caution because we will be talking with Members and other covered officials as part of the assessment we are conducting.⁸

This filing, and Lieberman’s prior public statements, indicate that Lieberman is acting as an agent of ZTE, which is a foreign principal within the meaning of FARA.⁹

A person is an “agent of a foreign principal” subject to registration under FARA if they are acting for, or on behalf of, a foreign principal as a “public relations counsel” or a “political consultant.”¹⁰

According to the description of Lieberman’s activities in his lobbying registration, he will be informing ZTE about the “concerns” that are driving the executive and

⁶ See Hallie Detrick, *Senate Moves to Block Trump’s Settlement with China’s ZTE, a ‘Personal Favor’ to President Xi Jinping*, FORTUNE (June 12, 2018), <http://fortune.com/2018/06/12/trump-settlement-zte-personal-favor-china-xi-jinping/>.

⁷ See Patricia Zengerle, *U.S. Senators Want Ban on China’s ZTE, Despite Trump Action*, REUTERS (July 12, 2018), <https://www.reuters.com/article/us-usa-china-trade-senate/u-s-senators-want-ban-on-chinas-zte-despite-trump-action-idUSKBN1K22YE>; see also Matt Binder, *President Trump Signs NDAA, Banning Government Use of ZTE and Huawei Technology*, MASHABLE (Aug. 14, 2018), <https://mashable.com/article/ndaa-zte-huawei-ban/#vIT62aE9Nmq3>.

⁸ Kasowitz Benson Torres LLP, *New Client Lobbying Registration for ZTE Corporation*, LD-1 Disclosure Form (Dec. 20, 2018), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=6D40FB20-288F-4352-A6C4-907BB5CC04A6&filingTypeID=1>.

⁹ 22 U.S.C. § 611(b)(3); see also Mercury Public Affairs, LLC, *Exhibit A to Registration Statement Pursuant to Foreign Agents Registration Act of 1938* (June 1, 2018), <https://efile.fara.gov/docs/6170-Exhibit-AB-20180601-47.pdf> (FARA registration disclosing ZTE Corporation as a foreign principal).

¹⁰ *Id.* § 611(c)(1)(ii). A person shall register with the Attorney General within ten days of becoming an agent of a foreign principal. *Id.* § 612(a).

legislative branch policies targeting the company and that are affecting American businesses' public perceptions of the company.¹¹ He will then advise the company about what measures it can take to address those concerns and change those policies and public perceptions.¹²

Lieberman's work for ZTE appears to qualify him for registration under FARA. He seems to be acting as a "public relations counsel" for ZTE, because he is "engage[d] directly or indirectly in informing, advising, or in any way representing [ZTE] in any public relations matter pertaining to political or public interests, policies, or relations" of ZTE.¹³ He also appears to be acting as "political consultant" for ZTE, because he is "engage[d] in informing or advising [ZTE] with reference to the domestic or foreign policies of the United States."¹⁴

Although FARA provides an exemption from registration for an agent who has engaged in "lobbying activities" on a private foreign principal's behalf and registers under the LDA,¹⁵ Lieberman asserts that he is not lobbying on ZTE's behalf.¹⁶ Therefore, by Lieberman's own admission, he is not eligible for the LDA exemption, and his voluntary LDA submission cannot change his registration obligations under FARA.

Lieberman should not be permitted to evade FARA's more robust reporting requirements by relying on the LDA exemption, while at the same time asserting that he is not lobbying on ZTE's behalf. Additionally, given ZTE's close relationship with the Chinese government and its status as an "important geopolitical pawn" for

¹¹ Kasowitz Benson Torres LLP, *supra* note 8.

¹² *Id.*

¹³ 22 U.S.C. § 611(g).

¹⁴ *Id.* § 611(p). FARA's implementing regulations define "domestic or foreign policies of the United States" broadly to include "existing and proposed legislation, or legislative action generally; treaties; executive agreements, proclamations, and orders; decisions relating to or affecting departmental or agency policy, and the like." 28 C.F.R. § 5.100(f).

¹⁵ *Id.* § 613(h).

¹⁶ See Kasowitz Benson Torres LLP, *supra* note 8 ("Lieberman/KBT will not be advocating for ZTE"); see also Lippman & Overly, *supra* note 1 ("Lieberman plans to register as a lobbyist for ZTE, but he said he won't actually lobby").

Beijing, there may also be questions about whether the LDA exception is available for ZTE at all.¹⁷

Recent indictments have demonstrated how foreign agents have unlawfully exploited the LDA exemption to disguise their activities on behalf of foreign powers.¹⁸ Therefore, it is important that the Department carefully police the boundaries of the LDA exemption to ensure that the American people have complete information about the efforts of foreign interests to influence our political system.

Thank you for your attention to this matter.

¹⁷ FARA's implementing regulations state that "in no case where a foreign government or foreign political party is the principal beneficiary will the [LDA] exemption . . . be recognized." 28 C.F.R. § 5.307. One reason that ZTE is the target of U.S. domestic and foreign policies is that it is closely tied to the Chinese government, and there is a perception that its products could be used by that government to conduct espionage or develop leverage over U.S. telecommunications networks. *See* sources cited *supra* note 4. Negotiations over U.S. foreign and domestic policies affecting ZTE have occurred at the highest levels of government, *see* sources cited *supra* notes 5-6, and *The New York Times* described ZTE as:

an important geopolitical pawn for Beijing, both as an innovator and as a builder of state-funded projects overseas. If China wants to improve ties with a government in the developing world, it often offers loans that can be used to set a ZTE-powered cellular network.

Longer term, China hopes that companies like ZTE will become powerhouses that can help the country wean itself from a reliance on American tech firms, which Beijing views as security threats because of the possibility that they could help Washington spy.

Mozur & Granville, *supra* note 4. The FARA Registration Unit has previously advised that the LDA exemption does not apply when the interests of an agent's commercial client and a foreign government are "bound together," and has noted that matters pertaining to sanctions were considered "to be part of U.S. foreign policy and not commercial." FARA Advisory Opinion at 2 (Apr. 9, 2013), <https://www.justice.gov/nsd-fara/page/file/1038291/download>; *see also* FARA Advisory Opinion (Dec. 3, 2012), <https://www.justice.gov/nsd-fara/page/file/1038286/download>. It has also found that the LDA exemption does not apply when a foreign government had provided funding to an agent's commercial client for projects that promote the government's political or public interests in the United States. FARA Advisory Opinion (Jan. 20, 2010), <https://www.justice.gov/nsd-fara/page/file/1038306/download>. The FARA Registration Unit should examine whether the Chinese government would be the "principal beneficiary" of the activities conducted by Lieberman and/or Kasowitz Benson Torres LLP, in which case the LDA exemption would not apply.

¹⁸ *See, e.g.*, Paul Sonne, Del Quentin Wilber & Byron Tau, *Little Known Law Is Key to Mike Flynn, Paul Manafort Probes*, WALL ST. J. (June 1, 2017), <https://www.wsj.com/articles/little-known-law-is-key-to-mike-flynn-paul-manafort-probes-1496337654> ("The potential FARA violations in question regarding Mr. Flynn and Mr. Manafort highlight the challenges the government faces in enforcing the law. Among them is a big loophole: the Lobbying Disclosure Act of 1995, known as the LDA.").

Respectfully submitted,

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